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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DEON ARCHIE,

Defendant and Appellant.

B267712

(Los Angeles County
Super. Ct. No. BA411725)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Craig Richman, Judge. Affirmed.

Patricia A. Scott, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Deon Archie appeals from the judgment entered following a jury trial that resulted in his conviction for first degree murder with gun and gang enhancements. The trial court sentenced him to 50 years to life in prison. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts*

a. *The murder and investigation*

Archie, known as “D.J.,” was a member of the “Swans” criminal street gang, a “Bloods” gang. Tikara Sapp had known Archie for most of her life, and had dated him at times. In May 2013 Sapp was dating Mark Martinez.

On the evening of May 23, 2013, Archie asked Sapp to pick him up at the train station and drive him to a location where he could earn money selling drugs. Sapp was out with Martinez, but Archie texted her that he did not mind if Martinez, who had never met Archie, accompanied them. He stated he would show Martinez “how to really make money.”

Sapp and Martinez thereafter picked Archie up in Sapp’s 2007 Pontiac Grand Prix. Sapp drove, Martinez was seated in the front passenger seat, and Archie sat in the back seat behind Sapp. The group drove to Sapp’s bank and then went to purchase marijuana. Sapp planned to purchase the marijuana at a smoke shop on the corner of 75th and Main Streets.

Deadrien Williams and victim Markai Brown were standing next to a wall by the smoke shop, waiting for a ride. As Sapp approached in her car, she told Martinez and Archie that they could probably buy marijuana from the men. She was unable to stop at the corner due to traffic, but circled around and drove towards the smoke shop. As Sapp neared the corner where Brown and Williams were standing, Archie said he was going to “bark at” or “bang on” the men. Archie called out the word “Third,” a reference to a rival gang. Archie asked the men whether they were selling marijuana. After a brief discussion, Archie said the men did not have any marijuana to sell, and Sapp began

driving away. When she stopped at the stop sign at 75th and Main Streets, Archie shot at Brown and Williams, killing Brown. Sapp heard three or more gunshots that sounded as if they were fired from close range. Martinez also heard four loud noises, like fireworks, but could not be certain whether they were coming from inside or outside of the car.

Sapp drove off and the group went to Karena Boyette's house about four blocks away from the shooting. When they exited the car, Sapp saw that Archie was holding a black gun. When the group entered Boyette's residence, Boyette saw Archie take out a black gun and place it on her china cabinet. Archie walked outside toward the corner of 71st and Main and looked toward the shooting site. He said, " 'I think I shot him.' " He also said, "They left without sirens. I think I killed Blood. I think I killed him," or words to that effect. Archie left with someone in a red car, and Sapp spent the night at Martinez's parents' home.

That night Archie told Sapp in text messages that he was at the shooting scene, the victim was dead, and the police had the area taped off. Archie said she should tell Martinez not to speak to anyone about what had happened; should not drive down Main Street; should check the back seat of the car for bullet shells; and should get her car painted. Sapp responded that it was up to Archie to have the car painted and to cover up what had happened. Archie told Sapp to pick him up in the morning so he could take care of everything. The next morning Sapp met Archie and they washed her car at his house. Archie wiped down the back seat where he had been sitting.

Brown suffered gunshot wounds to his stomach, forearm, and head and died from his wounds. Police recovered one projectile and six .40-caliber shell casings from the crime scene. Video footage from a nearby store enabled police to trace the 2007 Pontiac Grand Prix to Sapp.

Sapp was arrested on May 24, 2013. Initially she told detectives that Archie committed the shooting, but stated that she had just met him and she had not seen a gun. She refused to give Archie's real name, instead identifying him by his nickname, "D.J." She was afraid to tell police the truth and did not want to get Archie into trouble. Sapp

was arrested and charged with acting as an accessory to murder. The People agreed that she would receive a grant of formal probation and a sentence of time served in exchange for her truthful testimony at the preliminary hearing and trial. Martinez testified pursuant to a grant of immunity.

Text messages between Sapp and Archie regarding the shooting were extracted from her cellular telephone.

The gun used in the shooting was never recovered.

b. *Gang evidence*

Officer Robert Johnson testified for the People as a gang expert. He was assigned to a gang unit and dealt with the Swans and 7-Trey criminal street gangs. He had spoken to hundreds of gang members during the course of investigations, as well as in consensual conversations.

Johnson opined that Archie is a member of the 77 set of the Swans gang, who uses the moniker “Little Mad Face.” His opinion was based on Archie’s tattoos and Archie’s admissions to other officers that he was a Swans gang member.

The Swans gang is a Bloods gang with approximately 400 members. Their common symbol is the San Francisco 49er team logo, as well as the numbers 77, 84, 779, and 804. They have two subsets. Johnson demonstrated the gang’s hand sign. The territory claimed by the Swans gang extends north to Florence Avenue, east to Central Avenue, west to Broadway, and south to Manchester. The Swans gang had rivals in both Crip gangs, as well as other Blood gangs, including the Main Street, 7-Trey Gangster Crip, East Coast, Denver Lane, and B-Bop Flip Bloods gangs.

The Swans gang’s primary activities included narcotics sales, weapons possession, robbery, criminal threats, assaults with deadly weapons, and murder and attempted murder. Swans gang member Derrick Hall, who belonged to the 77 Street Swans set, committed an attempted murder on June 19, 2008, and was convicted of the crime. Swans member Evan Alfred, who was a member of the 79 Street set, committed a murder on June 25, 2007, and was convicted of the crime.

In a text message retrieved from Sapp's cell phone, Archie stated, " 'I got this 40 on Swan,' " which could mean he shot someone with a 40-caliber firearm. In gang parlance, "barking" at another means to talk aggressively or loudly; "hitting someone up" is a potential precursor to violence. The area where the shooting occurred, 75th and Main Streets, is known as an area claimed by the 7-Trey gang. Calling out the word "Third" is a reference to "Trey." When presented with a hypothetical based on the evidence presented in the case, Johnson opined that the shooting was committed to benefit a criminal street gang, in that the shooting would instill fear and intimidation into the community.

2. Procedure

A jury convicted Archie of first degree murder (Pen. Code, § 187, subd. (a)).¹ It found Archie personally and intentionally used and discharged a handgun, causing great bodily injury and death (§ 12022.53, subds. (b), (c), (d)), and the offense was committed for the benefit of, at the direction of, or in association with a criminal street gang with the specific intent to promote, further and assist in criminal conduct (§ 186.22, subd. (b)(1)).

The trial court sentenced Archie to 25 years to life on the murder charge, and an additional term of 25 years to life on the section 12022.53, subdivision (d) enhancement, for a total of 50 years to life. It imposed a \$300 restitution fine and a suspended parole restitution fine in the same amount, a court security fee, and a criminal conviction assessment. Archie appeals.

DISCUSSION

After review of the record, appellant's court-appointed counsel filed an opening brief that raised no issues, and requested this court to conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. We advised appellant that he had 30 days to submit by brief or letter any contentions or argument he wished this court to consider. We have received no response.

¹ All further undesignated statutory references are to the Penal Code.

We have examined the entire record and are satisfied appellant's attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 126; *People v. Wende, supra*, 25 Cal.3d at pp. 441-442.)

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

EDMON, P. J.

LAVIN, J.